

**BLUE RIBBON TASK FORCE FOR MERIT SYSTEM
PROPOSED RECOMMENDATIONS**

September 21, 2005

RECOMMENDATION 1:

Maintain civil service protections against political influence in the selection of qualified state classified employees; redefine mission statement (KRS 18A.010(1)) to include strong and clear directive; clarify prohibitions against political discrimination within KRS 18A.140(1).

ACTION REQUIRED: Statutory change to amend to KRS 18A.010(1) to include the directives of KRS 18A.140(1).

RECOMMENDATION 2:

The Selection Sub-committee recommends adoption of the proposals contained within the “[Proposed Future Hiring Processes](#)” from the Personnel Cabinet dated September 2005, with the exception of the need for a clarification of the proposal under “C – Register” concerning “eliminating registers for career path promotions and promotions”. The Sub-committee recommends maintaining an employee promotion system that provides career path opportunities through families of job classes based on merit, experience, excellent performance and evaluation. This provides for the capability for internal promotions without requiring external competition. This change will actually enhance the ability of a classified employee to promote within the existing system. A need exists for promulgation of a comprehensive Personnel Board regulation that defines process, procedure, and implementation. (101 KAR 1:400 merely reiterates the statutory requirements without any guidance for agency implementation). “Seniority” as defined in KRS 18A.005(35) for an internal promotion shall not be a controlling factor.

ACTION REQUIRED: Statutory and Regulatory changes

RECOMMENDATION 3:

To increase efforts for recruiting and hiring qualified veterans, minorities, women, and disabled.

ACTION REQUIRED: Statutory changes

RECOMMENDATION 4:

Request Personnel Cabinet to study the feasibility of establishing a comprehensive regulation for implementing procedures regarding background checks, including but not limited to NCIC checks, and employment references for all executive branch applicants.

ACTION REQUIRED: Personnel Cabinet study and possible statutory and regulatory changes

RECOMMENDATION 5:

Establish a process of ongoing review of the merit system and make recommendations regarding the merit system including a comprehensive review and update of KRS 18A and KAR 101. The review and update should be focused on providing definitions for terms used throughout KRS 18A and KAR 101. The review and update should also clarify any inconsistencies in the law including vague language subject to differing interpretation. The update should make the law governing the merit system user friendly and understandable and include a review of previous recommendations that have not been implemented. After the initial review and update, there should be an annual review and report.

ACTION REQUIRED: Policy Change

RECOMMENDATION 6:

It is recommended that “burrowing,” the act of switching from a non-merit position to a merit position late in an administration to get special merit protections, be limited by statute for those without reversion rights under 18A.005 by increasing the probation period to one year.

ACTION REQUIRED: Statutory Change

RECOMMENDATION 7:

KRS 18A.990, the penalty section of the civil service law, should be amended to apply to the traditionally criminal acts set out in KRS 18A.145. As currently written, the broad application of penalties to all acts within KRS 18A.005 through 18A.200 criminalizes such actions as the failure to maintain accurate records (i.e. KRS 18A.015); failure to document employee misconduct (i.e. KRS 18A.020); or the failure of the Secretary to attend all meetings. This overbroad reach of the statute trivializes the protections from criminal acts, by not distinguishing them from the day to day activities of the Commonwealth, including decisions concerning employment. Furthermore, it is recommended that acts of discrimination outlined in KRS 18A.140 be subject to civil penalties including fines and prohibition of future civil service when the board

determines circumstances warrant referral to the Attorney General for enforcement of these civil penalties.

ACTION REQUIRED: Statutory Change

RECOMMENDATION 8:

As presently enacted, KRS 18A.040 requires that "... rules, regulations and practices meeting merit system standards shall, where such standards apply as a prerequisite for federal grants-in-aid, be in effect continuously, notwithstanding any other provision of KRS 18A.005 to 18A.200. "The federal guidelines are set forth in 41 CFR 60 at pages 121-148. As stated, the purpose of the guidelines is to "incorporate a single set of principles which are designed to assist employers, labor organizations, employment agencies, and licensing and certification boards to comply with requirements of Federal law prohibiting employment practices which discriminate on grounds of race, color, religion, sex, and national origin." The guidelines' focus is upon the procedures prospective employers utilize in making employment decisions regarding all aspects of the employment relationship. A procedure which has an adverse impact upon the employment relationship of any protected class is deemed discriminatory and in violation of the federal regulations.

This statutory attempt to ensure compliance with federal regulation creates potential conflicts with regard to selection and affirmative action. Changes to selection procedures of employees must be in compliance with federal guidelines set forth in 41 CFR 60. While it is not mandated, federal regulations allow for the establishment of voluntary affirmative action programs. After reviewing KRS 18A, it is apparent that if the Commonwealth utilizes a person's race, religion, sex or national origin as a factor in selecting an employee, it would be in violation of state law as currently written. Therefore, the current statutes should be amended to clearly permit an affirmative action program.

ACTION REQUIRED: Statutory and Regulatory Change

RECOMMENDATION 9:

Since both the Personnel Cabinet and the Personnel Board have the authority to promulgate regulations with regard to personnel matters, topic areas that are under the purview of each should be clarified and distinguished.

ACTION REQUIRED: Statutory and Regulatory Change

RECOMMENDATION 10:

Adopt procedures to encourage resolution of personnel issues at the agency level prior to going before the Personnel Board.

ACTION REQUIRED: Statutory and Regulatory Change

RECOMMENDATION 11:

The reporting requirements in KRS 18A.030 should be reviewed for relevance and usefulness in providing meaningful oversight.

ACTION REQUIRED: Statutory Change

RECOMMENDATION 12:

Final written decisions of the Personnel Board should be made available for review electronically, organized by the statutory basis for appeal.

ACTION REQUIRED: Change in Personnel Board Practice

RECOMMENDATION 13:

The following technical changes to KRS 18A should be made:

- Change “commissioner” to “secretary” in 18A.037 and 18A.040. These are apparent oversights from reorganization legislation.
- Update the citation in 18A.043 for the Federal Drug Free work place to read "41 USCA § 707 et seq."

ACTION REQUIRED: Statutory Change

RECOMMENDATIONS 14:

Make a progression of options available for merit employees to address work-related complaints or disciplinary actions. At the beginning of the process, the employee may choose between filing a grievance, or requesting mediation where the agency is required to participate. If mediation is unsuccessful, or the grievance procedures fail to address the employee’s concerns to his satisfaction, the employee may have his concern heard by a peer review committee (to be established according to Personnel Cabinet guidelines). If the peer review committee action fails to address the employee’s concerns to his satisfaction, the employee may appeal the decision of the peer review committee to the Personnel Board.

Require the Personnel Board to monitor all grievances and mediations filed. This additional duty, along with information showing that the Personnel Board is underfunded in its implementation of existing statutory duties, makes it necessary to recommend that the Personnel Board be properly funded to perform all of its duties, both old and new.

ACTION REQUIRED: Statutory and Regulatory Changes

RECOMMENDATION 15:

Require the Personnel Board members to be subject to the Executive Branch Ethics Code, and require the Board to report annually to the State Government Committee. In their annual report, the Board should address the following:

- a. the number of merit state employees at the beginning and end of the reporting period;
- b. the number of grievances filed and mediation requests made by merit employees during the reporting period;
- c. a tabulation of the types of grievances filed during the reporting period – suspension, fine, demotion, dismissal, discrimination, job conditions, or other penalization;
- d. a tabulation of the types of mediation requests filed during the reporting period -- suspension, fine, demotion, dismissal, discrimination, job conditions, or other penalization;
- e. a comparison of the number of grievances and mediations filed by merit employees in previous reporting periods, including a comparison in the categories listed above;
- f. a tabulation of the stages in which employee complaints were resolved during the reporting period;
- g. the average amount of time taken to resolve employee complaints during the reporting period, by stage;
- h. a comparison of the amount of time taken to resolve employee complaints during the reporting period, by stage, and the amount of time taken during the previous reporting periods.

ACTION REQUIRED: Statutory Change

RECOMMENDATION 16:

Allow agencies to place employees on paid leave during the interim between issuance of an intent to dismiss letter and the date whereby the Cabinet Head, Agency Head or his designee determines whether to dismiss, alter, modify or rescind the intent to dismiss.

ACTION REQUIRED: Statutory and Regulatory Changes

RECOMMENDATION 17:

Implement a drug testing program for Executive Branch employees to include post offer/pre-employment drug testing, reasonable suspicion drug/alcohol testing, and random drug/alcohol testing.

ACTION REQUIRED: Statutory and Regulatory Changes

RECOMMENDATION 18:

Amend KRS 61.394 to enhance state employee paid military leave benefit to a maximum of twenty-one (21) calendar days from the current maximum of fifteen (15) calendar days. Allow any unused days in a federal fiscal year to be carried over to the following year. [Adding an additional week of paid leave and allowing service members to roll over unused weeks to the following year would enhance current benefits in parity with those benefits enjoyed by civil service employees in the federal government.]

ACTION REQUIRED: Statutory and Regulatory Changes

RECOMMENDATION 19:

Adopt one state leave request form for KRS 18A employees that would cover all types of leave: annual, sick, Family and Medical Leave, compensatory, military, voting, special, adverse weather, and blood donation. [This modification will allow a uniform approach to employee leave, and align the leave request form with the uniform state timesheets already in use.]

ACTION REQUIRED: Regulatory Change

RECOMMENDATION 20:

Conduct a disparity study of Executive Branch employees to determine if there is a disparity between the qualified work force of Kentucky citizens in protected classes, and Executive Branch employees in protected classes. The study should break down the numbers for each job category. [Implementation would require the Personnel Cabinet to request appropriate funding through the budgetary process.]

ACTION REQUIRED: Executive Branch Action

RECOMMENDATION 21:

Update the State Affirmative Action Plan consistent with federal requirements and industry best practices. The updated Affirmative Action Plan should provide tools to state agencies to assist them with reaching affirmative action goals established in the plan. The updated Affirmative Action Plan should contain provisions for accountability of agencies in the form of penalties for those agencies that do not make progress toward affirmative action goals and rewards for those agencies that make progress toward affirmative action goals.

ACTION REQUIRED: Executive Order and Statutory Change

RECOMMENDATION 22:

Require mandatory training regarding diversity and the updated Affirmative Action Plan to managers and other individuals making hiring decisions. The training should include emphasis on ways to reach affirmative action goals and established accountability provisions.

ACTION REQUIRED: Executive Order

RECOMMENDATION 23:

Seek a reduction in the number of classifications of between 40 and 60 percent.

- Currently there are 1,657 classifications and 708 of them have no more than five employees.
- There are 200 inactive classifications.
- Many classifications are specific to one cabinet and should be broader.

ACTION REQUIRED: Administrative

RECOMMENDATION 24: Maintain an annual increment in conjunction with the establishment of a minimum, mid and maximum pay grade for each salary.

- Pursue a current market survey and anticipate annual adjustments to the minimum, mid and maximum pay grades.
- When maximum salary conflicts with annual increment, consider alternate methods to award annual increments, for example lump sum payments.
- Further evaluate use of ACE and ERA awards.
- Consider impact of the establishment of maximum salary on long-term, senior employees to ensure they are not inadvertently hurt as they approach retirement.

ACTION REQUIRED: Legislative Consideration, Administrative

RECOMMENDATION 25: Train supervisors for employee evaluation.

- Use of evaluation process as a compensation for performance standard.
- Possibly use of outside consultant for selection of best practice methods.

ACTION REQUIRED: Administrative

RECOMMENDATION 26: Facilitate implementation of an optional 40-hour work week. Compensate employees for additional time.

ACTION REQUIRED: Legislative Consideration, Administrative